



# Texas Department of Insurance

333 Guadalupe Street P.O.Box 149104 Austin, Texas 78714-9104  
512/463-6169

115# 13630  
mjt

September 17, 1991

RQ-201

Claire Koriath-Chair  
Richard F. Reynolds-Member  
Allene D. Evans-Member  
Philip W. Barnes-Commissioner

The Honorable Dan Morales  
Attorney General of Texas  
Supreme Court Building  
P. O. Box 12548  
Austin, Texas 78711

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SEP 19 91

Opinion Committee

Attention: Opinions Committee

Dear General Morales:

Under arts. 1.04, sec.(g), 1.16, and 4.10, sec. 13 of the Texas Insurance Code (the "Code") a property and casualty insurance company is permitted to take as a credit against its premium tax liability the amount of "examination" and "evaluation" fees paid to the State for the applicable year. Art. 21.28-A of the Code provides for the supervision and conservatorship of insurance companies in specified situations, and its sec. 17 allows the Texas Department of Insurance to collect from rehabilitated companies the costs of rehabilitation incurred by the Department. This provision does not expressly provide for a deduction from premium tax liability as described above, although express provisions exist regarding charges to insurance companies for examinations conducted by the Examinations Activity of the Department.

The processes related to the supervision and conservatorship of the Department involve much more than the mere "examination" or "evaluation" of an insurance company, and these processes include monitoring company operations and management, controlling and managing the company, and advising the company. Moreover, in most cases problems in the management of the company cause the necessity for supervision and conservatorship; therefore, the public policies which favor the generation of tax monies for the State and disfavor the opportunity for an insurance company to benefit from its failures to operate in a sound and/or profitable manner result in a presumption against any deduction of these rehabilitation costs from a premium tax liability, especially in light of the legislature's failure to expressly provide for such a credit.

ACCOMPANIED BY ENCLOSURES -  
FILED SEPARATELY

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The established administrative construction is to disallow such a deduction, which construction has existed since the passage of sec. 17.

I respectfully request that you render a formal opinion on the following question:

Under art. 4.10, sec. 13 of the Code in conjunction with art. 21.28-A, sec. 17 of the Code, may an insurance company released from supervision or conservatorship deduct from its premium tax liability the fees it pays as "costs of rehabilitation?"

I appreciate your consideration of this matter, and enclosed for your review is the letter from Brian R. Davis dated September 3, 1991 which raises this issue. If you have any questions please refer them to George Joy, Counsel to the Conservator for the Texas Department of Insurance.

Sincerely,



Philip W. Barnes  
Commissioner of Insurance

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Enclosure